

REMARKS

Claims 2-3 and 8-9 were rejected under §112, second paragraph. Claims 2 and 8 have been amended as to form. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1 and 7 were rejected as unpatentable over CHINNASWAMY et al. 6,611,526 in view of BALAKRISHNAN et al. 2004/0090974. Reconsideration and withdrawal of the rejection are respectfully requested.

A verified English translation of priority Japanese application 2000-224743 filed July 26, 2000 is attached in the Appendix. Accordingly, the claim to the priority date of July 26, 2000 has been perfected. BALAKRISHNAN et al. asserts a date of July 5, 2001 (through a CIP filed August 12, 2003). Since the now-perfected priority date of July 26, 2000 precedes the asserted date of BALAKRISHNAN et al., this reference is no longer useful in the present application and the rejection should be withdrawn.

Claims 4 and 10 were rejected as unpatentable over CHINNASWAMY et al. in view of YAZAKI et al. 2004/0228274; claims 5 and 11 were rejected as unpatentable over CHINNASWAMY et al. in view of YAZAKI et al. and HEINANEN et al. ("A Two Rate Three Color Marker," Network Working Group, Request for Comments: 2698); and claims 6 and 12 were rejected as unpatentable over CHINNASWAMY et al. in view of KOJIMA 6,741,570. These claims

depend from claims 1 and 7 respectively and thus the rejections properly also must rely on BALAKRISHNAN et al. Since BALAKRISHNAN et al. has been removed as a reference, these rejections have also been overcome.

In addition, the present application and KOJIMA were commonly owned by NEC Corporation at the time of the present invention, and KOJIMA is a reference only under §102(e). Accordingly, by operation of §103(c), KOJIMA is not a reference that can be used in the present application. Thus, the rejection of claims 6 and 12 are overcome for this additional reason.

Art was not applied against claims 2-3 and 8-9. These claims are believed to be allowable.

In view of the present amendment and the foregoing remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional  
fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

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*[Signature]*

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**APPENDIX:**

The Appendix includes the following item:

- a verified English translation of priority Japanese application 2000-224743 filed July 26, 2000.